

5-5-1978

Report on State Measure No. 1: Home Rule County Initiative -- Referendum Requirements

City Club of Portland (Portland, Or.)

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Recommended Citation

City Club of Portland (Portland, Or.), "Report on State Measure No. 1: Home Rule County Initiative -- Referendum Requirements" (1978). *City Club of Portland*. 319.

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REPORT ON
STATE MEASURE NO. 1
HOME RULE COUNTY INITIATIVE-REFERENDUM
REQUIREMENTS

Purpose: Proposed amendment to county home rule charter constitutional provision. Requires charter county to allow minimum 90 day period for filing referendum petition. Initiative, referendum petitions circulated shall set forth measure in full; no ballot title required for circulation of referendum petition. Signatures required for referendum set at four percent, for initiative ordinance at six percent, for proposed charter amendment at eight percent, of votes cast for Governor in county at last four year term election.

To the Board of Governors,
 The City Club of Portland:

I. INTRODUCTION

State Measure No. 1 proposes to amend the Oregon constitution (Art. VI., Section 10, Paragraph 1) in setting forth requirements for referendum and initiative procedures in home-rule counties. This measure was House Joint Resolution 21; it was placed on the ballot by referral from the 1977 Legislature. The pertinent language reads: "... and no county shall require that referendum petitions be filed less than 90 days after the provisions of the charter or the legislation proposed for referral is adopted by the county governing body. To be circulated, referendum or initiative petitions shall set forth in full the charter or legislative provisions proposed for adoption or referral. Referendum petitions shall not be required to include a ballot title to be circulated."

In its study, the Committee reviewed the source and purpose of this legislation, examined its implications to home-rule counties, and discussed alternative methods for solving the perceived problem. (See Appendix for list of persons interviewed.)

II. BACKGROUND

Currently the five home-rule counties in Oregon¹ may set by charter or ordinance their own requirements for initiative and referendum procedures.² The 31 non home-rule counties must follow the requirements of the State Law.

Both the authors of State Measure No. 1 and its opponents have affirmed that the immediate stimulus for this measure was posed by Ordinance 57 of Multnomah County, passed on July 27, 1972. During the 1976 referendum on the Multnomah County Elected Officials Retirement Pension Ordinance, it was discovered that although Multnomah County had a 30 day period for filing referendum petitions, this period could be substantially eroded by ballot title challenges.³ Instead of having a full 30 days for circulation,

1. Benton, Hood River, Lane, Multnomah and Washington counties.
2. The substance of, as distinguished from procedures for, initiative and referendum rights are set forth in the Constitution and cannot be tampered with by home rule counties.
3. Ordinance 57 requires that, before a referendum or initiative petition can be circulated, it must have a "ballot title." The "ballot title" is composed of both a six word maximum caption and an explanation not exceeding 75 words. The caption and explanation are written by the District Attorney's office within five days after receiving the petition. Within the next five days any elector may challenge any part of the ballot title by filing a petition with the Circuit Court. Ordinance 57 further allows that "The review by the Circuit Court shall be determined expeditiously as may be appropriate for the orderly and timely circulation of petitions (Ordinance 57, Section 6,A,1). There is, of course, no time limit set for this review. Therefore, a minimum of ten days out of 30 is required from the time a referendum petition is filed until the time the petition can be circulated. If the ballot title is challenged the remaining 20 days could possibly be lost.

the current Multnomah County law realistically allows 20 days for circulating a referendum petition—less if the ballot title is challenged. This problem was not recognized prior to the 1976 referendum because there were no referrals in Multnomah County under that ordinance until that year.

At the time Ordinance 57 was passed, it conformed with the state's ballot title requirement. (The requirement of a ballot title on state referendum petitions was withdrawn by legislative action in 1973.) Although state-wide referenda require a 90-day period for circulation of petitions, the county was not bound to follow this procedure and chose not to. It chose instead a 30 day period.

The recognition of the problem posed by Ordinance 57 led to a more general concern by the sponsors of State Measure No. 1 that other home-rule counties might pass ordinances which would similarly restrict referendum rights.

III. ARGUMENTS FOR AND AGAINST

A. Arguments for

The measure would:

- 1) Bring home-rule county referendum requirements into conformance with state and non home-rule county procedures.
- 2) Eliminate ballot title requirement for circulation of petitions.
- 3) Allow citizens more time for the referendum process and therefore promote greater citizen participation.
- 4) Encourage the decentralization of governmental powers.
- 5) Correct the present problems in Multnomah County and prevent the future occurrence of similar problems in other home-rule counties.

B. Arguments against

The measure:

- 1) Allows state legislation to assume jurisdiction for powers granted to home-rule counties.
- 2) Would delay, by state law, the effectiveness of home-rule county ordinances until 90 days after passage.
- 3) Would delay the effective date of legislation, and thus may encourage misuse of county emergency powers.
- 4) Is aimed at Multnomah County's Ordinance 57. No other home-rule county has any perceived problems covered by this measure.
- 5) Does not bring home-rule counties into conformance with the state in the filing time for initiative petitions.

IV. MAJORITY DISCUSSION

When those Senators and Representatives in the 1977 Legislature who voted against HJR 21 were interviewed, they stated that they were opposed to this measure because they felt that the state was usurping powers granted to home-rule counties. They felt that if "home-rule" means anything it means the power to legislate locally over matters of local concern and that the items covered by this measure are best decided locally. There is some feeling that the source of legislation should be as close to the citizens as possible and that any deletion of home-rule powers erodes this proximity.

Furthermore, they concurred that this measure is aimed solely at Multnomah County and that any known problems this measure would solve should be handled by Multnomah County action. No one interviewed knew of any problems that this measure would correct in other home-rule counties.

Although home-rule counties have set 30 days as the time for an ordinance to take effect, only two specify the time allowed for referring county measures. Multnomah

County specifies 30 days for filing a referendum petition, Washington County allows 90 days.⁴ Home-rule counties tend to have either a larger urban population or a greater percent of their citizens in large urban centers than do non home-rule counties. This concentration of the population makes circulating a referendum petition less time consuming. If a citizens group in a home-rule county cannot gather enough signatures in 30 days in the most populous counties they are most unlikely to gather them in 90 days.

In the 1976 referendum the "Citizens for Fair Retirement Benefits" filed the original referendum petition with the County on Sept. 7, 1976. Between that date and Sept. 25, 1976, the ballot title was assigned; five days for a challenge were set aside; and 18,000 signatures were collected. A ballot title and challenge consume a minimum of 10 days, in this case leaving eight days for collection of signatures. This group collected all 18,000 signatures in four or five days. (Twelve days elapsed between the time the Ordinance was passed and the initial filing of the referendum with the County.)

Cities have typically chosen a 30 day referendum time, while home-rule counties tend to chose a 90 day referendum limit. In the words of Orval Etter, "There is no reason for cities choosing 30 days and counties 90 days, it's just tradition." It is reasonable that the most populous county in the state, Multnomah, would choose to function more like a city than a county. There have been no problems with a 30 day referendum time in Oregon cities.

This measure would not change the time limit for ordinances to take effect, but lengthen to 90 days the time allowed for referral of the law. This allows the distinct possibility of having a law valid for only 60 days from its date of effectiveness to its date of successful referral. Then the county must wait until the election to know if the effects of the ordinance during that 60 days are valid. This delay of 60 days seems unduly restrictive and confusing for county government.

If State Measure No. 1 passes and 90 days becomes the time for laws to become permanently effective, it may make the use of emergency clauses more attractive, nay necessary. This possible abuse of the emergency clause may undermine the very process it is trying to promote, i.e., more accessible government. If the emergency clause is attached to an ordinance there is no opportunity for a referendum; the ordinance takes effect immediately. The initiative process must be employed to change an ordinance with an emergency clause attached. A successful initiative does not suspend the effects of an ordinance, as a referendum does, until the election on the initiative is held.

The promoters of this measure allude to the desirability of having conformity in state, home-rule and non home-rule county procedures. The percentages of signatures required by this measure do conform to current state requirements; we have no criticism of this portion of the measure. If the reason for State Measure No. 1 is conformity, it should also speak to the discrepancy between state initiative timing and home-rule county initiative timing. The measure does not mention any requirements for the filing date for initiative petitions. Currently initiative measures in the state and non home-rule counties must be filed four months before the election date (Article IV, Section 1. (e)). Home-rule counties Washington, Benton, and Multnomah require initiative actions to be filed only 90 days before the election. In these home-rule counties the citizens are allowed a longer working time for initiatives.

Our opposition to the measure hinges primarily on two factors: 1) home-rule vs. state control; and 2) procedural legitimacy. We do not feel that the constitution should be altered because one county has a logistically unreasonable ordinance. A more sensible alternative is that Multnomah County give serious consideration to replacing Ordinance 57. Multnomah County has not been given the opportunity to rewrite its own legislation. The problems of Ordinance 57 were discovered in September of 1976. On February 8, 1977, HJR 21 was introduced by Representative Glenn Otto in the State Legislature. The County officials empowered to draft legislation were fully occupied with election matters

4. Since the other three counties do not address this matter, they of necessity follow state law in allowing a 90 day referendum period.

until the end of November, 1976. Surely these County officials had other matters to attend to between November, 1976 and February, 1977, when HJR 21 was presented to the legislature.

The problem of "procedural legitimacy" is a philosophical one. We are concerned that laws should be written in such a manner that it is possible to follow them. Laws that cannot be followed lead to confusion or evasion and therefore undermine confidence in all laws. The 60 day "limbo" created by the date of effectiveness for ordinances and the end of the referral process is an area of greyness. It may create many legal cases about the effects of laws effective for 60 days and may prompt the abuse of the emergency clause. When possible problems and abuses can be foreseen is it wise to impose them? Since there is no perceived problem in the state except the logistic problems of Ordinance 57, we suggest that State Measure No. 1 may create more problems than it solves.

V. MAJORITY CONCLUSION

The majority of the committee concludes that it is unfair to impose state law on all home-rule counties because one county has not been given time to rewrite its own ordinance. We recommend that Multnomah County be allowed to clean its own house by changing its referendum requirements to 1) eliminate the ballot title requirement for petition circulation but retain the 30 day limit from the time of passage of the law, or 2) keep the ballot title and challenge requirement but stipulate that a full 30 days for circulation of petitions be granted after any time taken by title challenge and court action.

VI. MAJORITY RECOMMENDATION

The majority of your Committee recommends that the City Club of Portland oppose the passage of State Measure No. 1 with a "NO" vote in the May 1978 primary election.

Respectfully submitted
 Eldon E. Edwards
 Leroy E. Finch
 Sheila Finch, *Chairman*
 For the Majority

VII. MINORITY REPORT

A. Minority Discussion

We agree with the majority's statement in the first paragraph of its discussion that "the source of legislation should be as close to the citizens as possible.***" Our disagreement is over whether this measure detracts from or serves this goal. While the majority refers to the fact that the measure would remove certain decisions from home-rule county governments, we are more concerned with the fact that the measure will guarantee the referendum rights of home-rule county citizens.

In this regard, we would point out that the measure does not increase substantive state rights or powers in any way. It only affects the allocation of power between home-rule county citizens and their county governments. We therefore view this measure as decentralizing government authority and as moving decision-making closer to the people by guaranteeing the longer 90 day period for the exercise of referendum rights.

We feel that an amendment to the state constitution, voted on by the people at large, is appropriate. Although Multnomah County is presently the only home-rule county with a 30-day referendum period, there is nothing in the present law to prevent other home-rule counties from enacting similarly restrictive ordinances in the future. We think it is significant that the majority agrees that the present situation in Multnomah County is undesirable. Nor can Multnomah County, or any other county, necessarily be relied upon to clean its own house.

State Ballot Measure No. 1 must be viewed against the present-day realities of Oregon county government. Prior to 1973, home-rule counties and cities could enact local legislation while the legislative powers of non home-rule counties were limited to areas of specific grants from the state legislature. This meant that a county which wanted to deal fully with all local concerns had to adopt home-rule status to do so. In 1973, however, the state legislature effectively abolished this distinction by permitting non home-rule counties to enact legislation "over matters of county concern," the same standard given to home-rule counties by the Oregon constitution.⁵ With this substantial equality of legislative power at the county government level, we believe that substantial equality at the citizen level is justified as well. Everyone concedes that State Ballot Measure No. 1 would do more than place the referendum rights of home-rule and non home-rule county citizens on a parity.⁶

A guaranteed 90 day referendum period would not present problems for home-rule county governments. Four of the five home-rule counties, as well as all 31 non home-rule counties, currently have 90 day referendum periods. Yet your committee received no evidence whatsoever that a 90 day period has posed any problems. From this absence of dispute, we conclude that the 35 of 36 Oregon counties which have a 90 day referendum period are satisfied with it. Similarly, four of the five home-rule counties have a 30 day ordinance effectiveness period coupled with a 90-day referendum period. Your committee heard no evidence that this difference in timing has posed any problems. If there were any problems, however, they could easily be resolved if home-rule counties made their ordinances effective in 90 days. This is presently the practice in the 31 non home-rule counties.

We do not believe that enactment of State Ballot Measure No. 1 would lead county commissioners to abuse their emergency powers (which permit counties to make ordinances effective immediately and avoid the referendum process). This cannot happen with tax measures since home rule counties cannot use emergency powers in tax cases. Nor is there any evidence of abuse of emergency powers in the four of five home rule counties which presently have 90 day referendum periods.

In the last analysis, we are persuaded by the great importance of referendum rights to Oregon's system of personal liberties. Over the past three-quarters of a century, these rights have assisted Oregonians in keeping their government in check and have kept the public involved in the governmental process. We therefore believe that the referendum rights of all Oregonians, including those who are citizens of home-rule counties, deserve the fullest permissible exercise and the fullest constitutional protection. Referendum rights, like other fundamental personal liberties, are too important to be left to the whim or discretion of county commissioners or county governments. As the Oregon Supreme Court recently noted in a similar context:

5. The Oregon Court of Appeals stated in 1976 that the 1973 legislation "obliterates most distinctions between the powers of general law (non home rule) counties and home rule counties. (I)n the absence of state preemption or a limiting charter provision, home rule and general law counties have the same legislative authority." *Allison v. Washington Co.*, 24 Or Ap 571, 581, 548, P2d 188, 194 (1976).
6. State Ballot Measure No. 1 would not place home-rule and non home-rule county initiative rights on a parity. (Initiative rights permit citizens to enact their own laws directly or to repeal laws already in effect. Referendum rights permit citizens to prevent laws from ever becoming effective.) We agree with the majority that this nonuniformity is desirable. The present initiative requirements in three home-rule counties are more favorable to the citizens than the non home-rule county requirement. (The other two home-rule counties have standards equivalent to the non home-rule standard.) It is therefore a virtue, and not a vice, that State Ballot Measure No. 1 does not require "uniformity" to the non home-rule standard in this area.

“Election laws should be liberally construed to the end that the people may have the opportunity of expressing opinion concerning matters of vital interest to their welfare. Expression, not suppression, tends toward good government . . . ”⁷

B. Minority Conclusion and Recommendation

The referendum rights of Oregon's home-rule county residents deserve a full guarantee in the state constitution. Accordingly, the minority of your committee recommends that the City Club of Portland support a “YES” vote on State Measure No. 1 in the May, 1978 election.

Respectfully submitted,
Margaret J. Dobson
Peter R. Jarvis
For The Minority

Approved by the Research Board March 23, 1978 for transmittal to the Board of Governors. Received by the Board of Governors April 10, 1978 and ordered printed for distribution to the membership for discussion and action on May 5, 1978.

7. *Multnomah County v. Mittleman*, 275 Or 545, 558, 552 P2d 242, 248 (1976), quoting *State ex rel v. Hoss*, 143 Or 383, 22 P2d 883, 885 (1933).

APPENDIX

State Legislators:

Rep. Bob Brogoitti, District 58, Union, Wallowa & Umatilla Counties
Sen. Lenn L. Hannon, District 26, Jackson & Klamath Counties
Rep. Cecil L. Johnson, District 49, Josephine County
Rep. Dennis Jones, District 60, Harney, Lake & Malheur Counties
Rep. Ben Lombard, Jr., District 52, Jackson & Klamath Counties
Rep. Glenn E. Otto, District 23, Multnomah County
Rep. Sandy Richards, District 22, Multnomah County
Sen. George Wingard, District 20, Lane County

State and County Officials:

Larry Bevens, Business Manager of Elections Divisions, State of Oregon
Ray Phelps, Assistant to Secretary of State, State of Oregon
Patricia E. Corder, Clerk, Multnomah County Elections Division
Allen Robertson, Elections Manager, Multnomah County Elections Division
Martin Vidgoff, Deputy County Counsel, Multnomah County

Interested Individuals and Associations:

Orval Etter, Associate Professor, School of Community Service and Public Affairs,
University of Oregon
Richard D. Roberts, former Attorney for Board of County Commissioners, Multnomah County
Kenneth C. Tollenaar, Director, Bureau of Governmental Research and Service,
University of Oregon

Because the Board of Governors and Research Board determined that State Measure No. 2 did not warrant a full ballot measure study, THE FOLLOWING STATEMENT IS PUBLISHED BY THE RESEARCH BOARD AS INFORMATION TO THE MEMBERSHIP:

STATE MEASURE NO. 2

(Open Meeting Rules for Legislature)

Purpose: Section 14, Article IV of the Oregon Constitution now requires all meetings of each house of the Oregon legislature, and meetings of their committees and committees of the whole, to be open. This proposed amendment adds a requirement that meetings of joint committees also be open, and that each house, and houses jointly for any joint activity, shall adopt rules to carry out the open meetings requirement.

Section 14, Article IV of the Oregon constitution, as amended November 5, 1974, reads:

"Sec. 14. The deliberations of each house, of its committees and of committees of the whole, shall be open."

State Measure No 2, if adopted by the people at the primary election to be held May 23, 1978, would amend Section 14 to read:

"Sec 14. The deliberations of each house, of (its) committees *of each house or joint committees* and of committees of the whole, shall be open. *Each house shall adopt rules to implement the requirement of this section and the houses jointly shall adopt rules to implement the requirements of this section in any joint activity that the two houses may undertake.*"

State Measure No. 2 adds the requirements that meetings of joint committees be open and that each house adopt rules to implement the open meeting requirement.

House Joint Resolution 29 (the legislation which put State Measure No. 2 on the ballot) was adopted unanimously by both houses. There is no known opposition to the measure. The purpose of the amendment is simply to clarify Section 14, Article IV of the Oregon constitution by specifically requiring open meetings of joint committees.

(Approved by The Board of Governors April 10, 1978 for publication and distribution to the membership.)